

Psychosocial hazards: understanding the upside down

A presentation for Clubs NSW
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Agenda

The legal framework

Poor organisational justice

Case studies

Understanding the upside down

The legal framework in NSW

Work Health and Safety Act 2011 and Work Health and Safety Regulation 2025

Work health and safety duties

Employer

A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers while the workers are at work in the business: s 19

Officers

An officer of the PCBU must exercise due diligence to ensure that the person conducting the business or undertaking complies with the duty or obligation: s 27

Workers

The worker has a duty to ensure their acts/ omissions do not adversely affect health and of them or others AND to comply with lawful and reasonable directions/policies: s 28

Other persons

Other persons at a workplace have a duty to ensure their acts/ omissions do not adversely affect health and of them or others AND to comply with lawful and reasonable directions/policies: s 29

Work health and safety framework



1

A duty to identify foreseeable hazards: reg 34

2

A need to undertake a risk assessment of the hazards to eliminate risks to health and safety so far as reasonably practicable, or control: s 17 and reg 35

3

A duty to consult workers: s 47

4

A duty to ensure safety measures are implemented, and remain effective, fit for purpose and suitable, including to audit and review: regs 37 and 38

Recent development

26A Duty of persons conducting business or undertaking—code of practice

A person conducting a business or undertaking must, if the Minister approves a code of practice for the purposes of this Act—

- (a) comply with the code, or
- (b) manage hazards and risks arising from the work carried out as part of the conduct of the business or undertaking in a way that is different to the code but provides a standard of health and safety that is equivalent to or higher than the standard required under the code.

Psychosocial hazards



An obligation to ensure the workplace is safe from risk of psychological harm



Businesses need to identify psychosocial hazards



Businesses need to manage psychosocial risks, by elimination or control



There needs to be consultation, risk assessment and a psychosocial management plan / mentally safe workplace

Code of Practice: Managing Psychosocial Hazards at Work

Common psychosocial hazards

Role
overload

Role
underload

Exposure to
traumatic
events

Role conflict
or lack of
clarity

Conflict

Poor
support

Bullying,
harassment,
workplace
violence

Remote
working

Poor
procedural
justice and
organizational
change

Poor organisational justice

Poor organisational justice

Poor organisational justice means a lack of:



1

procedural justice (e.g. fair decision making processes)



2

informational fairness (e.g. keeping everyone up to date and in the loop)



3

interpersonal fairness (e.g. treating people with dignity and respect)

Poor organisational justice



Poor organisational justice may include:

- policies or procedures that are applied inconsistently or unfairly (e.g. departing from your policy without telling employee)
- bias in decision-making (e.g. conflicted or pre-determined)
- not providing adequate information about allegations or performance concerns
- not accommodating workers' reasonable needs (e.g. not making adjustment during a process or providing supports)
- failing to appropriately address issues (e.g. underperformance, misconduct, or inappropriate or harmful behaviour such as bullying), or
- not communicating outcomes in a transparent manner.

Case studies

Cases involving disciplinary processes and complaint handling

An unfair dismissal case

... it would be remiss of me not to observe that the length of time [of 5 months to make the decision to dismiss] was grossly excessive especially in circumstances where SC Hydro was aware ... of the emotional toll that the suspension was having on Mr Neethling. ... This matter reflects poorly on SC Hydro particularly with respect to its own psychosocial safety obligations towards Mr Neethling during the disciplinary process.

Neethling v SC Hydro Pty Ltd [2026] FWC 2411

Recent prosecutions (1/2)

- Royal Australian Air Force technician took own life while on duty at RAAF Base Williamtown
- Commonwealth fined \$188,000 plus adverse publicity order
- Failure to train supervisors in use of performance management tools
- Workers displayed signs of distress
- Comcare said “...at no point during this process did the worker’s supervisors refer him for support, place him on leave, or take any other steps to relieve the stress and pressure he clearly felt”



Recent prosecution: poor organisational justice (2/2)



The employer is charged with a section 32 offence under *Work Health and Safety Act 2011 (NSW)*



Allegation is exposed worker to risk of serious harm by poor management of his grievance



Grievance relates to alleged manner of email communication of manager to others (with only one email being to the particular worker)



The risk in the case is “to the worker’s physical or psychological health as a result of poor organisational justice by failing to adequately manage grievances in the workplace”.



The alleged failures include: failure to independently investigate, failure to attempt to resolve within 20 days, failure to require mediation, failure to request an apology, failure to counsel the manager, failure to get commitment to cease behaviour

Prosecution withdrawn: experts say

1

The organisation's efforts to find restorative options, even if not in the timeliest fashion, does not in itself indicate organisational wrongdoing or exposure to an unreasonable risk of psychological injury

2

delays or imperfections in grievance handling fall within the scope of reasonable administrative variability and are not indicative of organisation negligence

3

forcing mediation or demanding an apology risks causing harm and not resolving the grievance

4

Poor psychological safety climate becomes harmful when it is frequent, prolonged / systemic or severe

Understanding the upside down

Tips for managing psychosocial

My tips

- 1 **Develop a psychosocial master plan of hazards and “medicines”**
- 2 Increase HR resources and combine HR and WHS teams and knowledge
- 3 Train and educate managers – this is where it will go wrong
- 4 **Communication – often and the difficult**
- 5 **Eliminate drift and avoidance of issues**

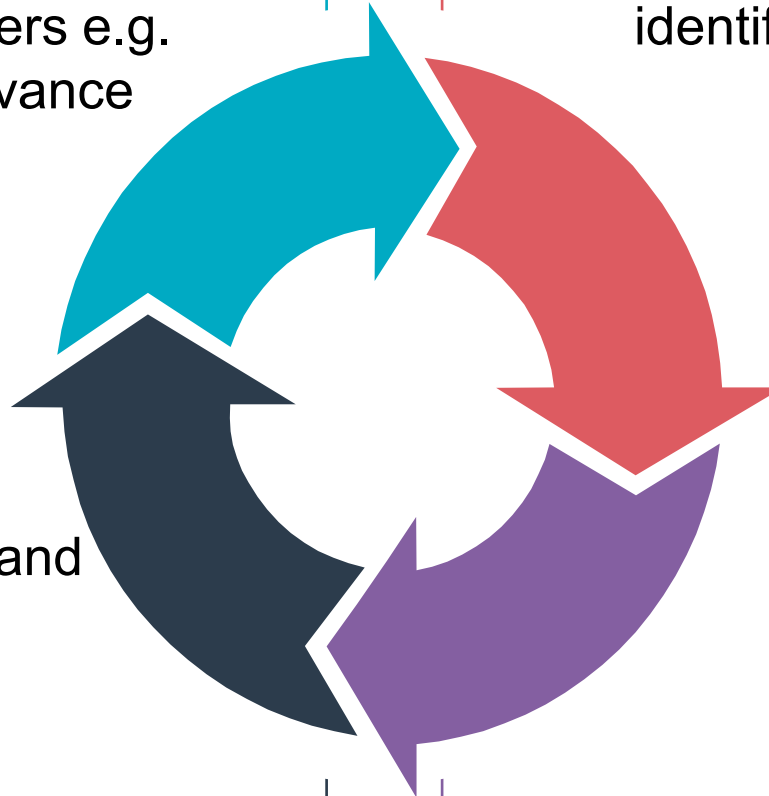
Master plan

Bring together all policies and safe work procedures on psychosocial matters e.g. bullying, sexual harassment, grievance handling, workplace violence etc.

Identify any gaps – in hazards not identified, in risks not addressed and in measures that are missing

Develop your master plan after consulting with key stakeholders and workers

Consider **how to operationalise safety** – this may identify other measures needed for a psychosocial safe workplace



Development in practice - a small example

- **Psychosocial hazard:** workplace violence
- **Information:** Code of Practice *Managing Psychosocial Hazards*
- **What do you have:** a safe work procedure on 'physically' responding to violence, including de-escalating through to calling security
- **A gap and risk:** reporting of incidents and taking action: see *SafeWork NSW v Marist Youth Care Limited* [2024] NSWDC 74
- **A measure:** are you able to utilise existing complaint making mechanisms
- **How to remain effective:** are managers etc. trained to respond constructively to incident reports and provide feedback (informational fairness/consult), are incidents collate and patterns identified, lessons learnt etc.

In your master plan you will have identified a risk, measures to address and how to operationalise

Communication: Informational fairness

The following risk control actions can help ensure there is fair communication and information sharing within an organisation:

- Communicate organisational policies and procedures to all employees, both at induction and ongoing, and keep checking that all employees are aware of the policies and procedures.
- Create ways for employees to have input into decisions that directly affect them and encourage them to do so.
- Ensure policies and procedures are readily accessible to all employees.
- Engage employees at all levels of the organisation during the development of policies and procedures.
- Communicate with employees about the reasons for changes to policies or procedures.
- Communicate the reasons for decisions and the background of decisions. People are more likely to accept a decision, even if unfavourable, if they know the reasons and the intended purpose.
- Use ongoing communication mechanisms such as team meetings, all-staff meetings, internal newsletters, emails, intranets or notice boards.

Practical guardrails

Separate discomfort from injury: *not every complaint is a hazard*

Maintain procedural fairness: *transparency protects organisations*

Avoid process drift: *silence and delays increase perceived injustice*

Watch power dynamics: *pay attention to perceived imbalance in authority, status or influence*

Keep leadership engaged: *ensure capability to hold difficult conversations and limit all outsourcing to HR*

Questions

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